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February 29, 2024

**VIA ECF AND EMAIL**

The Honorable Katherine Polk Failla  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007  
Failla\_NYSDChambers@nysd.uscourts.gov

**MEMO ENDORSED**

**Re: *Shopify Inc. v. John Doe 1 et al.*, No. 1:23-cv-09102-KPF**

Your Honor:

We represent Plaintiff Shopify Inc. in the above-captioned matter. We submit this letter to provide a status update on Shopify's efforts to serve the John Doe Defendants, per the Court's December 27, 2023 Order (ECF No. 14 at 3), and to request a final extension of Shopify's service deadline from March 15, 2024 to April 15, 2024. *Id.*

This action is the third Shopify has filed against those who are abusing the Digital Millennium Copyright Act ("DMCA") by sending bogus notices of alleged copyright infringement to Shopify in an effort to harm their online rivals. Shopify recently received a judgment and permanent injunction in its favor in a similar lawsuit. *See Shopify Inc. v. Lotz*, No. 1:23-cv-01254-LJV, ECF No. 10 (W.D.N.Y. Jan. 16, 2024). In another case, a stipulated judgment awaits the court's consideration. *See Shopify Inc. v. Mokrian*, No. 6:23-cv-02266-WWB-RMN, ECF No. 14 (M.D. Fla. Dec. 20, 2023). In both cases, the defendants admitted sending notices containing misrepresentations in violation of 17 U.S.C. § 512(f).

In this case, Shopify has not yet been able to identify and serve the defendants responsible for the misconduct and has sued them as Does 1-3. Shopify served subpoenas on two Doe Defendants' email service providers on December 21, 2023 in an effort to obtain information it could use to identify and serve them. The subpoena that Shopify served on non-party Skiff World, Inc. (ECF No. 10-3) did not yield any actionable information. Shopify is still awaiting a production in response to the subpoena that it served on non-party Microsoft Corp. (ECF No. 10-1). Counsel for Microsoft has stated that a production is forthcoming, but claimed in mid-February, for reasons that are not clear, that their response would take at least another three weeks. Shopify has pressed Microsoft for a response as promptly as possible.

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In light of these developments, Shopify respectfully requests that the time to effectuate service on Defendant Does be extended from March 15, 2024 until April 15, 2024. This extension should allow Shopify sufficient time to receive Microsoft's production, evaluate the information produced, and determine whether it believes it will be able to proceed against the defendants.

As set forth in Shopify's prior letter motion (ECF No. 13), where good cause exists, the Court "must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m); *see also* Fed. R. Civ. P. 6(b); *Cobalt Multifamily Invs. I, LLC v. Arden*, No. 06 Civ. 6172 (KMW) (MHD), 2013 WL 5780810, at \*1 (S.D.N.Y. Oct. 24, 2013) (citing Fed. R. Civ. P. 4(m)). And where, as here, the defendants' identities are unknown and the plaintiff exercises reasonable diligence to locate them, courts routinely find good cause for extending service deadlines. *See Mahon v. Namani*, No. 15-cv-2032 (CM), 2016 WL 6820739, at \*3 (S.D.N.Y. Nov. 10, 2016) (finding good cause to extend service deadline until after identification of Doe defendants); ECF No. 13 at 2 (citing additional authority).

If Your Honor permits, Shopify will provide another status report via letter to the Court on April 1, 2024 if service is not yet complete, updating the Court on the status of Shopify's efforts. This is Shopify's second request for an extension of its time to effectuate service. Shopify is currently the only named party in this litigation, so there is no objection to either request. A proposed order is attached to this letter for the Court's convenience.

We thank the Court for its attention in this matter.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

s/ Jeremy P. Auster

Jeremy P. Auster

Application GRANTED. The deadline for Plaintiff to effectuate service upon the John Doe Defendants is hereby ADJOURNED to **April 15, 2024**.

Upon service of the John Doe Defendants, Plaintiff is hereby ORDERED to file a letter requesting reinstatement of the initial pretrial conference. Plaintiff shall otherwise file a status update on or before **April 1, 2024**, if service is not yet complete by that date, apprising the Court of its efforts to effectuate service on the John Doe Defendants.

The Clerk of Court is directed to terminate the pending motion at docket entry 15.

Dated: March 1, 2024  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE